No. 3443

United States
# Circuit Court of Appeals
For the Ninth Circuit.

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In the Matter of the Estate of JAMES BICKNELL CASTLE, Deceased.

JULIA WHITE CASTLE,

Plaintiff in Error,

vs.

WILLIAM R. CASTLE, LORRIN A. THURSTON and ALFRED L. CASTLE, Trustees Under the Will of JAMES BICKNELL CASTLE, Deceased,

Defendants in Error.

## BRIEF FOR PLAINTIFF IN ERROR.

**Upon Writ of Error to the Supreme Court of the Territory of Hawaii.**

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WILLIAM R. CASTLE, LORIN A. THURSTON and ALFRED L. CASTLE, Trustees Under the Will of JAMES BICKNELL CASTLE, Deceased,

Defendants in Error.

**Brief for Plaintiff in Error.**

STATEMENT OF FACTS.

James Bicknell Castle, formerly of Honolulu, in the Territory of Hawaii, died in the year 1918, leaving surviving him a son and a widow, Julia White Castle, plaintiff in error; and, also, leaving a will which was duly admitted to probate.

The widow, the plaintiff in error, duly elected to take dower under the statute of Hawaii and repudiated the provisions made in the will in her favor.

The said James Bicknell Castle, in his lifetime, took out certain policies of life insurance in New York life insurance companies, payable to his executors, administrators or assigns. The amount covered by the policies (less certain advances by the companies) was collected in due course by the executors of said James Bicknell Castle after his decease, and passed to the possession of the defendants in error upon the approval of the accounts of the said executors on April 5, 1919, and is now held by said defendants in error, as to one-third of the same, to wit: The sum of eighteen thousand three hundred two and 73/100 ($18,302.73) dollars, subject to the decree of this court as to the right claimed therein by way of dower by said Julia White Castle, plaintiff in error.

At the time of the settlement of the accounts of the executors of the will of said James Bicknell Castle, the Judge sitting in probate, by an order dated April 5, 1919, found, as a matter of law, that, under the Hawaiian Statute of Dower, the plaintiff in error herein was entitled, by way of dower, to an absolute property in one-third part of the proceeds of said policies of life insurance, to wit: The sum of eighteen thousand three hundred two and 73/100 ($18,302.73) dollars.

Thereafter the trustees under the will of said James Bicknell Castle, being the predecessors in trust of the defendants in error herein, took an appeal from the decree of said judge in probate, upon said question of dower, to the Supreme Court of the Territory of Hawaii; such proceedings were had be-

fore said Supreme Court that said decree was reversed and, by a decree filed on the ninth day of July, 1919, said Supreme Court of the Territory of Hawaii held that the plaintiff in error herein was not entitled to share in the proceeds of said policies of life insurance, then in the hands of said trustees, subject to the order of said court.

The plaintiff in error, thereafter, within six months from the date of the filing of said last-named decree, took out a writ of error, directed to said Supreme Court of the Territory of Hawaii, returnable before this Court.

The plaintiff in error made assignment of error as follows:

I.

"That the Supreme Court of the Territory of Hawaii erred in ordering and rendering judgment that this plaintiff in error was, and is, not entitled to share by way of dower, under the laws of the Territory of Hawaii, in the proceeds of certain policies of life insurance which had been taken out by the said James Bicknell Castle in his lifetime and made payable to his executors and administrators upon his decease.

II.

That the said Supreme Court of the Territory of Hawaii erred in entering judgment against said Julia White Castle on her petition for the assignment to her of one-third (1/3) of the proceeds of said policies of life insurance which had been collected by the executors and trustees named under the will of said James Bicknell

Castle and which sum was, at the time of the application of said Julia White Castle, in court and subject to the disposition of the court as part of the estate of said James Bicknell Castle, deceased."

The statute of the Territory of Hawaii, on the subject of dower, is as follows:

"Every woman shall be endowed of one-third part of all the lands owned by her husband at any time during marriage, in fee simple, in freehold, or for the term of fifty years or more, so long as twenty-five years of the term remain unexpired, but in no less estate, unless she is lawfully barred thereof; she shall also be entitled, by way of dower, to an absolute property in the one-third part of all his movable effects, in possession, or reducible to possession, at the time of his death, after the payment of all his just debts."

The statute, as originally enacted, reads as follows:

"The wife shall in virtue of her marriage, be entitled in law to receive upon the death of her husband, by way of dower, a life estate in one third part of all immovable and fixed property owned by him at the time of her intermarriage, or acquired by him during her marriage; and an absolute property in the one third part of all his movable effects in possession or reducible to possession at the time of his death, after the payment of all his just debts."

Laws of Kamehameha III, 1846, p. 59, sec. 4.

The record presents but a single question of law, the construction of Laws of Hawaii I. Relating to Dower.

Plaintiff in error submits the following points as bearing upon the question of error by the Supreme Court of the Territory of Hawaii:

(1) The Court below applied a wrong principle of construction in considering said statute.

(2) The Court erred in giving technical construction to language not used in the technical sense.

(3) The Court erred in ignoring the intent of the legislature.

(4) The Court erred in limiting its operation of the words "movable effects" to chattels.

(5) The Court erred in ignoring the surrender value of the policies at the time of the death of the testator.

(6) The construction adopted would permit fraudulent evasion by husbands of the dower act.

1. The rule of construction.

It is obvious that the Court below applied a most rigid and narrow construction to the language of the statute. It could not have been more narrow had the statute been criminal and had imposed a penalty. Being remedial and beneficent in its design, the statute should have received a liberal construction. It can hardly be necessary to cite authorities on this point. A liberal construction would include credits and rights in action in the meaning given to "movable effects in possession, or capable of being reduced to possession." The contractual right was

capable of being reduced to possession and was so brought into possession in cash by the executors.

2. The language of the statute was not technical.

Reference to the original language used at the time the subject was first acted upon by the legislatures of Hawaii shows that the words "immovable property" and "movable effects" were intended to cover all classes of property and were used in a popular sense. The attempt to confine to one meaning only the words "movable effects," as if words like "heirs of the body" had been used, was not a reasonable construction of the statute. The Connecticut case, Strong v. White, 19 Conn. 238, relied on by defendants in error, has no application to a case involving the meaning of an act of the legislature.

3. The intent of the legislature.

The Court below ignored the obvious intent of the legislature of Hawaii to liberalize the law as to dower. No imaginable purpose could be served by limiting this benevolence so as to exclude a share in the proceeds of life insurance policies.

4. The Court erred in limiting the operation of the words "movable effects" to chattels.

That the fair construction of section 2977, Revised Laws of Hawaii, would give a widow a share by way of dower in the proceeds of policies of life insurance, taken out by the husband and made payable to his executors or administrators, is shown by the following considerations:

The language is—

> "She shall also be entitled, by way of dower, to an absolute property in the one-third part of all his movable effects in possession, or reducible to possession, at the time of his death, after the payment of all just debts."

The words "at the time of his death" import that death has occurred. The language does not compel a construction which would refer the crucial status back to the lifetime of deceased.

The whole statute is dealing with the estate of a person deceased. Can a woman be the widow of a living man?

The policy is payable at the moment of death. The sums covered then become reducible to possession. The statute nowhere says that the item of property must be reduced to possession by the husband personally, any more than it implies that the debts he leaves behind him must be paid by him in person.

When contrasted with the words "immovable or fixed property," it does no violence to language to construe the words "movable effects in possession or capable of being reduced to possession" as covering every species of credit or right in action.

When the testator took out the life insurance policies in question he parted with nothing. Naming his executors and administrators as beneficiaries simply confirmed the right to the proceeds to himself; a right which remained subject to his control to the time of his death. Defendants in error's case, Tyler v. Treasurer etc. (Mass.), 115 N. E. 300

(1919), clearly shows that it is not necessary for death to intervene to complete title to the proceeds of life insurance. The right attaches upon the designation being made in the policy.

No change of beneficiary was made by the testator in his lifetime. A general residuary clause in a will cannot have such operation. The will simply does not exist as against a widow's statutory right.

Rights of a beneficiary of life insurance policy attach immediately upon designation by contract, and are in nowise modified or increased at the time of death of the insured.

> "The rights of the beneficiary are vested when the designation is made in accordance with the terms of the contract of insurance. They take complete effect as of that time. They do not wait for their efficacy upon the happening of a future event. They are in nowise modified or increased at the time of the death of the insured.
>
> "It is indeed the general rule that the policy and the money to become due under it, belong, at the moment it is issued, to the person or persons named in it as the beneficiary or beneficiaries."
>
> Gould v. Emerson, 99 Mass. 154.
> 96 Am. Dec. 720.

James B. Castle, in legal effect, was the beneficiary named in the policies. The proceeds of such policies remained subject to his control throughout his lifetime. He did not transfer or assign the benefits to accrue under the life policies to any person. His

will cannot operate as such assignment, as far as the rights of his widow are concerned.

5. The surrender value.

These policies had a surrender value at the time of the decease of James B. Castle. The Court below plainly erred in not allowing plaintiff in error one-third part of such surrender value. How does the surrender value calculated at the time of the death of the insured differ from the full face value after the deduction of the loan made by the life companies to the deceased?

There is no room here for any metaphysical hair-splitting as to a difference in value the moment before death, or the moment after death.

## II.

## The Hawaiian Cases.

The Supreme Court of Hawaii, it is submitted with all deference, draws a wrong inference from the language of the Court in Trustees of Ena Estate v. Ena, 18 Haw. 538. In that case the Court was dealing with the payment of debts. But all personal estate by the Hawaiian statute is subject to the payment of debts before any allowance to the widow can be made. Therefore, where the Court uses the expression "personalty in which the widow has no dower interest," it is merely tautological.

The case of Estate of Alexandre, 19 Haw. 551, plainly is not in point. That was a case arising from a mutual agreement by members of a society to levy an assessment among survivors upon death of a member. It was stipulated that proceeds should not become a part of the estate of deceased. It was a

scheme to provide benefits for a family, to exclusion of creditors, and it was held that the exclusion might be extended to the widow.

Much more is involved in this record than a construction of a local statute by a local court. Where the domestic relations are concerned, a fairly uniform system should prevail throughout the country. The spirit of the age tends to defeat the power of control of large estates from the grave by means of freak wills, or through narrow and strained construction of statutes. If a medieval point of view shows itself in any remote locality within the controlling jurisdiction of this court, it should be scotched forthwith.

Honolulu, February 28, 1920.

Respectfully submitted,

FRANCIS M. HATCH,

For Julia White Castle,

Plaintiff in Error.